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IN THE

Supreme Court of the United States

October Term, 1952

No. 820

U. S. A. C. TRANSPORT, INC.
(also d/b/a U. S. Airplane Transport, Inc.),
Petitioner,

vs.

THE UNITED STATES OF AMERICA,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS, TENTH CIRCUIT

U. S. A. C. TRANSPORT, INC.
Petitioner

By: J. NINIAN BEALL
310 Investment Building
Washington 5, D. C.

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To the Honorable, The Chief Justice of the United States, the Associate Justices of the Supreme Court of the United States:

Your petitioner, U. S. A. C. Transport, Inc., being aggrieved by the decision of the United States Court of Appeals, Tenth Circuit, handed down on the 21st of April, 1953, in the case entitled before it as "U. S. A. C. Transport, Inc., appellant, v. The United States of America, appellee, No. 4538, now reported in F.2d (R-143), respectfully represents and shows the Court that:

I.

Statement of Matters Involved

Petitioner is a common carrier by motor vehicle of property, and conducts certain specialized operations in certain specified territory, and holds a certificate of convenience and necessity issued by the Interstate Commerce Commission under the Interstate Commerce Act. Petitioner is particularly engaged in the transportation of heavy and bulky articles, including airplanes, etc., requiring special equipment, and such transportation is not usually performed by common motor carriers of commodities generally.

At about 9:30 P.M. on a Friday, in April, 1949, the Air Force of the United States contacted one T. W. Murray, who was connected with petitioner, and made known its urgent need for a specialized service to be rendered from Littleton, Colorado to Alaska, and other destinations not disclosed, and the service was desired to begin the following Monday Morning (R-59). The service required by the Air Force consisted of moving tow-motors weighing about 30,000 pounds each and specially designed for use in connection with large military planes known as B-36 bombers (R-59-60). The transportation was performed under arrangements made by said Murray and involved 32 shipments to numerous destinations (R-61). The destinations were made known when the tow-motors had been loaded, and bills of lading were given the drivers. The shipments moved on government bills of lading (R-63, 113), the government was both consignor and consignee and the government paid the transportation charges (R-109, 111, 113). Some of the shipments were consigned to points within the United States, such as Box Elder, North Dakota and Fort Worth, Texas with intended ultimate destinations not being identified or made known to petitioner (R-61, 62).

At the time these movements took place, there was an atmosphere of acute tension with respect to relations with Russia, and the B-36 bomber was related to the use of the atomic bomb. Disclosure of destinations of the tow-motors bore on the locations of the B-36 bombers and, in turn, the use of atomic bombs, so secrecy was a factor in the arrangements made for transportation. Petitioner had a secrecy agreement with the government (R-57).

Neither Murray nor the petitioner held authority from the Interstate Commerce Commission to transport such tow-motors between Littleton, Colorado and North Dakota and Texas destinations.

Upon completion of the movements, the Interstate Commerce Commission caused an information to be brought against petitioner charging that it performed transportation to the North Dakota and Texas points for the United States, without holding authority from the Interstate Commerce Commission under the Interstate Commerce Act (R-2).

Proceedings in District Court

On April 19, 1950, at the instigation of the Interstate Commerce Commission, there was filed in the District Court of the United States for the District of Colorado, an information charging petitioner with performing unauthorized transportation (R-3). Petitioner moved to dismiss the information on the ground that no certificate was required from the Interstate Commerce Commission to serve the sovereign in the performance of a sovereign function (R-3). The motion was denied (R-4). Petitioner went to trial before a jury and was found guilty (R-5).

Proceedings in U. S. Court of Appeals

Upon being convicted in the District Court, petitioner appealed to the United States Court of Appeals, Tenth Circuit, and raised, inter alia, the question of necessity

for a certificate from the Interstate Commerce Commission to contract with the sovereign United States. The Court of Appeals affirmed the judgment of the District Court (R-143), and petitioner comes to the Supreme Court of the United States praying for a writ of certiorari.

II.

Statement of Jurisdiction

The United States Court of Appeals, Tenth Circuit entered judgment April 21, 1953 affirming the judgment of the District Court, reported in F.2d (R-143).

Jurisdiction of this Honorable Court to grant certiorari is invoked under Judicial Code (28 U.S.C.A. 1254), and under Rule 37(b) of the Rules of Criminal Procedure.

III.

QUESTIONS PRESENTED

1. Whether an agent selected, designated, and contracted with by the sovereign United States, in the exercise of functions of sovereignty (national defense), may perform transportation service involving exclusive use of vehicles, for the sovereign only, without first having secured authority to perform the particular transportation from the Interstate Commerce Commission under the Interstate Commerce Act.

(a) Whether the Interstate Commerce Act circumscribes the prerogatives of the sovereign in selecting and designating its transportation agents, and makes such selection contingent upon the selected agent holding or being able to secure the permission of the Interstate Commerce Commission;

(b) Whether the Circuit Court of Appeals rendered a decision at variance with the decisions of the Supreme Court of the United States;

(c) Whether petitioner, as the sovereign's agent, may invoke the exemptions and immunities of the sovereign, and thereby exculpate itself;

(d) Whether transportation for the sovereign only, of a non-commercial commodity, constitutes engaging in interstate commerce, as a common carrier, for the general public, within the meaning of the Interstate Commerce Act.

IV.

REASONS RELIED UPON FOR ALLOWANCE OF THE WRIT

1. The issues are matters of first impression under the Interstate Commerce Act, and involve very important considerations of national policy and national defense, and only this Honorable Court can render a decision which will serve to guide both government officers and government agents for the future.

2. The principle of sovereign immunities from its own statutes is well established; however, to give lip service to sovereign immunities in the performance of sovereign functions, but to deny to a selected and designated agent the right to perform the sovereign's will, is substantially identical with destruction of sovereign prerogatives in the first instance.

3. There is nothing in the Interstate Commerce Act which impairs the prerogatives of the sovereign, and nothing in said Act which circumscribes the right of any selected and designated agent to serve the sovereign.

4. The Circuit Court of Appeals has disregarded the opinions of this Honorable Court respecting the canons for construction of statutes as respecting sovereign prerogatives, and, in so doing, has in effect legislated adversely to the interests of the sovereign in a field which Congress (advisedly) has not acted.

5. The Interstate Commerce Commission in the exercise of its quasi-independence in initiating prosecutions has, in effect, circumvented the Attorney General for the United States; and the granting of the writ will necessarily bring before this Honorable Court the position of responsible officials representing the sovereign United States.

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(also d/b/a U. S. Airplane Transport, Inc.),
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THE UNITED STATES OF AMERICA,
Respondent

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

I.

Petitioner, In Acting As Agent For, And In Performing Transportation Services For The Sovereign, The United States, Without Permission From The Interstate Commerce Commission, Did Not, And Could Not, Violate Any Provisions of The Interstate Commerce Act.

The information contains eleven counts, of which Count I is typical (R-2), and charges:

Count I

On or about the 24th day of April, 1949, in the District of Colorado, U.S.A.C. Transport, Inc., a corporation, defendant, did knowingly and wilfully

engage in an interstate operation on a public highway as a common carrier by motor vehicle and, as such carrier, did transport a tractor towing diesel by motor vehicle on public highways from Littleton, Colorado, to Benbrook, Texas, for the United States Government for compensation in the amount of $958.70, without there being in force with respect to defendant a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such interstate operations. (Title 49, Section 306(a), U. S. Code.) (R-2-3)

Petitioner moved for dismissal of the information, for reasons given—

"Motion of Defendant to Dismiss (R-3)

"The defendant moves that the information and each separate count thereof be dismissed on the following grounds:

"1. The information does not state facts sufficient to constitute an offense against the United States.

"2. The transportation of property by motor carrier for the United States Government for compensation does not require a certificate of public convenience and necessity issued by the Interstate Commerce Commission.

* * * * ."

The motion was overruled by the District Court (R-4) and the Court of Appeals affirmed (R-143).

The Government selected and appointed petitioner as its agent to perform the service (R-58, 59); the shipments moved on Government bills of lading (R-113); the Government was consignor and consignee and paid the transportation charges (R-109) from defense appropriations (R-113).

No question has been raised respecting the authority of the Air Force officers to arrange for the transportation, nor is it questioned that they exercised sound discretion in arranging for the transportation as being essential for the national defense and emergent (R-59).

It has not been shown or contended that other transportation service was available which might have been used. It has not been contended that petitioner could have applied to and received any authority between Friday night when the service was requested and Monday morning when it was needed. The officials of the Air Force were the sole judge of the need for the services, and their discretion is not subject to review by the Interstate Commerce Commission. The officials of the Air Force were duty bound to select a competent agent and to consider the cost or comparative cost to the United States.

These matters serve to focus attention on the impairment to sovereign prerogatives which must flow from the position taken by the Interstate Commerce Commission and as affirmed by the Court of Appeals. They also serve to bring into focus the predicament in which a contracting agent is placed when one branch of the Government—the Air Force—determines its requirements and secures service, and another branch of the Government—the Interstate Commerce Commission—asserts jurisdiction over the contracting agent and prosecutes it for having met the requirements of the Air Force.

Statute Involved

The Interstate Commerce Act, Sec. 306(a), Title 49, U. S. Code, provides that a common carrier of property may not transport in interstate commerce without there being in effect a certificate of public convenience and necessity. The Interstate Commerce Commission has never issued a permanent certificate for transportation for the United States. Counsel for the Commission, on brief and argument before the Court of Appeals, explained by saying that transportation limited to the United States would not be common carriage. Transporting for the United States was all that petitioner did; yet

it was charged as acting as a common carrier. Petitioner does not wish to be obligated to serve the general public as a condition precedent to serving the sovereign, even had it suspected that this case would arise. The Court of Appeals appears to have taken the position that because petitioner is a common carrier in some portions of the United States and operates under a certificate, that it is thereby prevented from serving the sovereign beyond the scope of its certificate to serve the general public. Petitioner contends that it may be a common carrier for the general public where certificated, and may also be an agent and contractor for the sovereign, anywhere, independently of other operations, and that it is the sovereign prerogative to choose it as an agent.

There is nothing in the Interstate Commerce Act by which the sovereign has surrendered any of its prerogatives to contract as it chooses, and nothing to prevent a chosen agent from performing for the sovereign. The immunities of the sovereign must run to performance by a chosen agent; otherwise the sovereign prerogatives are annulled with respect to both service and costs.

Probably no one ever anticipated that the issue here would ever arise, so the Interstate Commerce Act is silent on the matter of sovereign prerogatives except in Sec. 22 (made applicable to motor carriers under Sec. 317(b)) wherein it is provided:

> "That nothing in this part shall prevent the carriage, storage, or handling of property free or at reduced rates for the United States, State or municipal governments * * *."

That provision is merely declaratory of the common law, as was pointed out in Opinions of the Attorney General v. 38, p. 452.

That provision as in the original Act of 1887, long before there was a certificate provision for either rail

(1920) or motor carriers (1935), and its application has not been narrowed by any subsequent amendments to limit it to carriers holding certificates from the Interstate Commerce Commission.

CONSTRUCTION OF THE INTERSTATE COMMERCE ACT BY THE INTERSTATE COMMERCE COMMISSION

The Interstate Commerce Commission has recognized that neither the United States nor its agents are restricted by provisions of the Interstate Commerce Act.

United States mail is property; however, no operating authority is required from the Interstate Commerce Commission, by either common or contract carriers, to transport mail for the United States. In *Atcheson, T. & S. F. Railway—Extension,* 3 Motor Carrier Cases 694, the Commission held that no authority was required to transport mail in motor vehicles:

> "The transportation of mail under contract with the Post Office department in vehicles used exclusively for that purpose is not subject to the requirements of the act, nor do we believe that special authorization is necessary to permit common or contract carriers by motor vehicle to transport mail in the same vehicle with property moving in interstate or foreign commerce."

OPINIONS BY ATTORNEY GENERAL

The Motor Carrier Act, Part II of the Interstate Commerce Act, was enacted in 1935, and shortly thereafter there arose the question of sovereign prerogatives. The Act made specific provision for reduced rates by common carriers, but contained no provision whereby contract carriers could depart from their schedules of minimum

charges. The government desired to engage a contract carrier at charges below those filed with the Interstate Commerce Commission.

The question was submitted to The Attorney General by the Secretary of War, for opinion. On April 20, 1936, The Attorney General gave his opinion, reported in *Opinions of Attorney General,* vol. 38, p. 452 and, upon careful examination of the statute and decisions of this Honorable Court, concluded that:

(A) There is nothing in the Interstate Commerce Act which curtails the prerogatives of the sovereign, and

(B) A contract carrier is not bound by the Act and rules promulgated thereunder, in contracting with the sovereign.

The Attorney General recognized the futility of bare sovereign immunities unless the sovereign agent was also at liberty to contract with the sovereign.

SOVEREIGN PREROGATIVES

In general, the sovereign United States is not included within the scope of a statute unless it is shown to be bound by clear and specific language. The sovereign is never bound, unless specifically named, when it would be deprived of an established prerogative, title, or interest. In *Dollar Savings Bank v. U. S.* (1874), 19 Wall. 227, 22 L.Ed. 80, it is pointed out:

> "The most general words than can be devised (for example, any person or persons, bodies politic or corporate) affect not him in the least, if they may tend to restrict or diminish any of his rights and interests."

In *U. S. v. Knight* (1840), 14 Pet. 361, 10 L.Ed. 465, the Supreme Court commented on exemptions of the sovereign in the following terms:

"This is no invidious prerogative right, but a rule founded on well ascertained public policy, necessary to protect the public interests against the negligence of public officers; and especially to guard the public revenue. It is a rule adopted in many if not all the states of this Union, and probably in most other countries, as well as the United States; and has been sanctioned by repeated judicial decisions."

U. S. v. Herron (1874) 20 Wall. 251, 22 L.Ed. 275
Title T. & T. Co. v. Title G. & S. Co. (1912), 224 U.S. 152, 56 L.Ed. 706.

Here the sovereign undertook to provide for the national defense by engaging a contractor of its own choice. The contention that the government is not bound, but that the contractor is bound, has the effect of restricting the choice of the sovereign. Exceptions to the rule that the sovereign is not bound by statutes unless specifically named, arise only in connection with statutes designed to prevent personal injury and wrong, and where the injury and wrong involved may be committed by the sovereign or its agents as well as by private parties.

The case of *U. S. v. Schupper*, 77 Fed.Supp. 737, relied upon by the Circuit Court of Appeals (R-144), is not in point for the reasons that the shipments moved on commercial bills of lading for private consignors, and it is not even shown that the government paid the transportation charges, and certainly the government did not arrange for the transportation. There, the government was merely the consignee of a commercial commodity shipped by a private shipper.

May Petitioner Invoke The Prerogatives of the Sovereign to Exculpate Itself?

Petitioner may invoke the prerogatives of the sovereign to justify acts performed for the sovereign when the sovereign could not be held liable for the same acts. See *Salliotte v. King Bridge Co.* (C.C.A., 6th), 122 Fed. 378,

65 L.R.A. 620, certiorari denied, 191 U.S. 569, 48 L.Ed. 306.

Numerous cases are collected in American Jurisprudence,—Independent Contractors, vol. 27 p. 532, Sec. 53, Note 13.

The Transportation Performed By Petitioner Was Not Common Carriage, And Was Not Interstate Commerce Under the Interstate Commerce Act.

The sovereign is not the general public which represents common carriage.

In *Atcheson T. & S. F. Railway v. U. S.*, 225 U.S. 640, 56 L.Ed. 1236, 1239 (June 7, 1912) it was held:

> "The company in carrying the mails was not hauling freight, nor was it acting as a common carrier, with corresponding rights and liabilities, but in this respect it was serving as an agency of government, and as such subject to the laws and regulations as every other branch of the Post Office."

Petitioner transported an item designed for and useful only to the government in connection with national defense, and it was no more an article of trade and commerce than the mails or the atomic bombs.

The Court of Appeals erred in holding that petitioner was a common carrier in serving exclusively the United States (R-144).

The Court of Appeals Misconceived The Applicable Principles of Statutory Construction

The Court of Appeals erred in holding that, as it found no specific exemption of transportation for the government, it must be concluded that it was not intended to exempt such transportation (R-144).

Two errors are involved in the reasoning of the Court: First, the sovereign cannot be brought under the Act by inferences, but only by specific provisions; and Second, statutory provisions which are merely declaratory of the common law are not to be construed by application of the maxim *expressio unius exclusio alterius*. Opinions of Attorney General, v. 38, p. 452.

Interstate Commerce Act Contains No Provisions For Emergency Service.

To construe the Interstate Commerce Act as preventing a designated agent from serving the sovereign United States without approval of the Interstate Commerce Commission, regardless of the emergency, would result in an absurdity. The Government would be powerless to gather forces to meet any national emergency. The approval or veto power claimed by the Commission would be elevated above the discretion and duties of every officer of the United States.

We submit that no emergency provisions were put in the Act for the simple reason that nothing in the Act was ever intended to circumscribe the prerogatives of the sovereign under any circumstances.

CONCLUSION

The questions presented are of great national importance.

It is at least significant that from 1935 when the Motor Carrier Act was enacted, until this criminal proceeding was brought against petitioner, the broad issues had not been squarely raised before either the Interstate Commerce Commission or the Courts.

It must be concluded that the matter was deemed to have been settled by the ruling of The Attorney General. See Opinions of The Attorney General, vol. 38, p. 452 (1936). Thereafter, the Interstate Commerce Commission remained silent except when in specific cases, such as carriage of the mails, *Atcheson T. & S. F. Railway*, 3 M.C.C. 694, *supra*, someone raised the issue.

There is here nothing to indicate that responsible officers of the United States even know of this case. Unless this Honorable Court grants certiorari, the not so well reasoned opinion of the Circuit Court of Appeals, Tenth Circuit, will certainly serve to intimidate all who would otherwise be glad to bid on Government business

The judgment should be reversed.

Respectfully submitted,

By: J. NINIAN BEALL
310 Investment Building
Washington 5, D. C.
Attorney for Petitioner.

Dated at Washington, D. C., May 21, 1953.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINION BELOW

The opinion of the Court of Appeals (R. 143-147) has not yet been reported.

JURISDICTION

The judgment of the court of appeals was entered on April 21, 1953 (R. 147-148). The petition for a writ of certiorari was filed on May 21, 1953. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTION PRESENTED

Whether a common carrier by motor vehicle may disregard the limitations in its certificate of public convenience and necessity when it serves the United States Government.

STATUTE INVOLVED

The pertinent provisions of Part II of the Interstate Commerce Act, 49 Stat. 543, 49 U.S.C. 301 et seq., are as follows:

> Section 203 (a) (14). The term "common carrier by motor vehicle" means any person which holds itself out to the general public to engage in the transportation by motor vehicle in interstate or foreign commerce of passengers or property of any class or classes thereof for compensation, whether over regular or irregular routes * * *.
>
> Section 206 (a) (1). Except as otherwise provided in this section and in section 210a, no common carrier by motor vehicle subject to the provisions of this part shall engage in any interstate or foreign operation on any public highway * * * unless there is in force with respect to such carrier a certificate of public convenience and necessity issued by the Commission authorizing such operations * * *.
>
> Section 208 (a). Any certificate issued under section 206 or 207 shall specify the service to be rendered and the routes over which, the fixed termini, if any, between which, and the intermediate and off-route points, if any, at which, and in case of operations not over specified routes or between fixed termini, the territory within which, the motor carrier is authorized to operate * * *.
>
> Section 210 (a). To enable the provision of service for which there is an immediate and urgent need to a point or points or within a territory having no carrier service capable of meeting such need, the Commission may, in its discretion and without hearings or other proceedings, grant temporary authority for such service by a common carrier or a contract carrier by motor vehicle, as the case may be. Such temporary authority * * * shall be valid * * * for not more than an aggregate of one hundred and eighty days * * *.

STATEMENT

Petitioner was charged by information with transporting property of the United States for compensation by motor vehicle in interstate commerce without a certificate of public convenience and necessity, in violation of Section 206 (a) of the Interstate Commerce Act (R. 2-3). Petitioner moved to dismiss on the ground, inter alia, that transportation for the Government does not require a certificate (R. 3). The motion was denied (R. 4) and, after trial before a jury, petitioner was convicted and fined $550 (R. 5).

Petitioner is a common carrier by motor vehicle whose certificate authorizes it to transport airplanes and parts between points east of the Mississippi River (R. 8-9, 74). Its customers regularly include the

United States Government (R. 74). In the conduct of its business petitioner distributes to shippers and government officers sales literature showing the scope of its authorized operations, and copies of its published tariffs (R. 53).

Between April and July, 1949, petitioner transported for the United States eleven shipments of tractor towing diesels from Colorado to points in Texas and South Dakota (R. 2-3, 61). Its certificate admittedly did not authorize such service (R. 8; Pet. 3).

On appeal, the Court of Appeals for the Tenth Circuit unanimously affirmed the judgment of conviction (R. 143-147). The court, in rejecting petitioner's contention that a certificate is not required to perform transportation for the United States, pointed out that Section 306 [206] of the Act prohibits a common carrier from engaging in interstate commerce on the public highways without a certificate, and that "[a] common carrier transporting goods for the United States Government for hire from one state to another is still a common carrier, engaged in interstate transportation, to the same extent as when thus transporting goods for a private individual," (R. 144).

ARGUMENT

The petition presents a single narrow question: whether a motor common carrier may disregard the limitations in its certificate of public convenience and necessity when it serves the Government. We submit that the negative answer given to this question by the two courts below is plainly correct,1/ and that the issue is not of sufficient importance to justify further review by this Court.

The provisions of Part II of the Interstate Commerce Act show that Congress intended the certificate requirements for motor common carriers

---

1/ The only other reported case dealing with this issue similarly held that a motor carrier violated Section 206 (a) by transporting goods on behalf of the Government without certificate authority. United States v. Schupper Motor Lines, 77 F. Supp. 737 (N.J.).

to be equally applicable whether the carriage is performed for the Government or for a private shipper. Section 206 (a) (1) provides that "no" common carrier by motor vehicle shall engage in "any" interstate operations on a public highway without a certificate of public convenience and necessity authorizing "such operations" (emphasis added). Certificates are required to specify the "service to be rendered" and the "routes over which, the fixed termini, if any, between which, and * * * the territory within which, the motor carrier is authorized to operate." Section 208 (a). The only exemption from these requirements is in favor of carriers to whom the Commission has given temporary authority (for not more than 180 days) to perform service "for which there is an immediate and urgent need." Section 210 (a).2/

Where Congress wished to exempt specific transportation services from the general regulatory provisions of the Act, or to exempt transportation for the Government from particular statutory requirements, it did so in explicit terms. Thus, Section 203 (b) exempts a number of types of motor transportation from most of the Act's regulatory provisions, including the certificate limitations. Similarly, carriage for the United States is specifically excepted from the general prohibitions against transporting goods on credit (Section 223) and against departing from published tariffs (Sections 22, 217 (b)). The failure by Congress to include transportation for the Government in the Section 203 (b) exemptions, or specifically to except it from the certificate requirements, shows that Congress intended to adhere to the familiar rule that "[i]n respect to furnishing transportation, a railroad [or motor carrier] ordinarily bears to the Government the same relation that it

---

2/ Petitioner made no attempt to secure such temporary authority during the three months when it was performing the transportation, although it was well aware of the availability of such authorization. Petitioner's president testified that "we have received, I would say, from the I.C.C. four or five hundred temporary authorities * * *" (R. 62).

does to a private person using its facilities," St. Louis, Brownsville & Mexico Ry. Co. v. United States, 268 U.S. 169, 173.

Petitioner plainly was acting as a common carrier when it performed this transportation for the Government. The Act defines a common carrier as one which holds itself out to the general public to engage in motor transportation of passengers or property for compensation. Section 203 (a) (14). Petitioner has so held itself out to shippers generally, including the Government (R. 53), and holds a certificate authorizing such service. It undertook to and did haul property for the Government in the regular course of business as part of its common carrier operations, just as it would do for any other shipper (R. 58-60).

Petitioner argues that no certificate would be required if the Government itself performed the transportation; and that it can claim the same exemption because it acted as the Government's agent. But agents of the Government are not cloaked with governmental immunity "merely because they do its work" (Kiefer & Kiefer v. Reconstruction Finance Corporation, 306 U.S. 381, 388); "* * * those who contract to furnish supplies or render services to the Government are not such [government] agencies and do not perform governmental functions" (Penn Dairies v. Milk Control Commission, 318 U.S. 261, 269). Obviously, a common carrier who furnishes transportation for the Government does not thereby become a governmental instrumentality. Cf. Fidelity & Deposit Company v. Pennsylvania, 240 U.S. 319, 323.3/

3/ Petitioner asserts that the Government would be unduly hindered in its choice of agents if it could select only carriers whose certificates authorize the service sought. But that is an argument that properly belongs to the Government, not to petitioner, and the "Government disclaims" it. James v. Dravo Contracting Co., 302 U.S. 134, 158. In any event, no burden is imposed on the Government by requiring truckers dealing with it to comply with the provisions of the Interstate Commerce Act. Cf. Penn Dairies v. Milk Control Commission, supra.

CONCLUSION

The decision below is correct, no important question of Federal law is presented, and there is no conflict of decisions. It is respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT L. STERN,
Acting Solicitor General.

STANLEY N. BARNES,
Assistant Attorney General.

DANIEL M. FRIEDMAN,
Special Assistant to the
Attorney General.

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